

2002R01419/LAN

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Crim. No. 03-_____
	:	
	:	
v.	:	18 U.S.C. §§ 371 & 2;
	:	15 U.S.C. §§ 78j(b) and 78ff;
	:	17 C.F.R. § 240.10b-5
GEORGE VIEIRA	:	

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

COUNT ONE

(Conspiracy to Commit Securities Fraud, Bank Fraud and Mail Fraud,
and to Make False Statements to Auditors)

Suprema Specialties, Inc.

1. At all times relevant to this Information, Suprema Specialties, Inc. was a New York corporation with its corporate headquarters, and a processing plant, located in Paterson, New Jersey (“the Paterson plant”). Suprema had three wholly-owned subsidiaries at which it manufactured and processed cheese for sale: Suprema Specialties West, Inc., located in Manteca, California; Suprema Specialties Northwest, Inc., located in Blackfoot, Idaho; and Suprema Specialties, Northeast, Inc., located in Ogdensburg, New York (collectively referred to herein as “Suprema” or “the Company”). Suprema was engaged in the business of manufacturing, processing and distributing a variety of purportedly all natural cheese products throughout the United States and elsewhere. Suprema’s products consisted primarily of mozzarella, ricotta and provolone cheeses and grated and shredded parmesan and romano cheeses. Suprema sold its

products to supermarkets and other retail establishments; food service industry distributors, which, in turn, sold the products to restaurants, hotels, and caterers, among others; and food manufacturers, which used the products in the preparation of prepared foods, such as frozen pizza.

2. In or about April 1991, Suprema held an initial public offering, issuing approximately 1,000,000 shares of common stock. Suprema's common stock was publicly traded on the over-the-counter market beginning in approximately April 1991. Commencing in or about March 1993 through in or about March 2002, Suprema's common stock was traded under the symbol "CHEZ" on the National Association of Securities Dealers Automatic Quotation National Market System (the "NASDAQ"), an electronic securities market administered by the National Association of Securities Dealers.

3. On or about December 19, 2001, Suprema's Chief Financial Officer ("CFO") and Controller each resigned. On or about December 21, 2001, Suprema issued a press release announcing the resignations and stating that Suprema was undertaking a review of its prior reported financial results. On that same day, the NASDAQ suspended trading on Suprema stock; trading on Suprema stock never resumed. On or about February 24, 2002, Suprema filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, which was converted to a Chapter 7 liquidation shortly thereafter. On or about March 1, 2002, NASDAQ delisted Suprema's stock. Suprema and its subsidiaries are now defunct entities.

The Defendant and His Companies

4. At all times relevant to this Information, California Milk Market, Inc. (“CMM”) was a California corporation, with its principal place of business located in Escalon, California. At all times relevant to this Information, defendant GEORGE VIEIRA’s wife, who is not named as a defendant herein, was the Chairman of the Board and President of CMM. At all times relevant to this Information, CMM was in the business of brokering the sale of milk and milk-related products.

5. At all times relevant to this Information, West Coast Commodities, Inc. (“WCC”) was a California corporation, with its principal place of business located in Escalon, California. At all times relevant to this Information, defendant GEORGE VIEIRA was Chairman of the Board and President of WCC. At all times relevant to this Information, WCC was in the business of brokering the sale of cattle and animal food products.

6. At all times relevant to this Information, defendant GEORGE VIEIRA was a resident of Escalon, California. At all times relevant to this Information, defendant GEORGE VIEIRA was responsible for the day-to-day operation of both WCC and CMM.

7. Between in or about November 2001 and in or about March 2002, defendant GEORGE VIEIRA was the Chief Operating Officer of Suprema Specialties West, Inc. in Manteca, California.

The Securities and Exchange Commission and Suprema’s Required Public Disclosures

8. At all times relevant to this Information, the Securities and Exchange Commission (“SEC”) was an independent agency of the United States government which was charged by law with preserving honest and efficient markets in securities.

9. In order to sell securities to members of the public and maintain public trading of its securities in the United States, Suprema was required to comply with provisions of the federal securities laws, including the Securities Exchange Act of 1934 (“the Act”), and rules and regulations promulgated thereunder, that were designed to ensure that a company’s financial and business information was accurately recorded and disclosed to members of the investing public. Among other things, these laws and regulations required Suprema to: (a) file with the SEC, prior to the sale of its shares to the public, a registration statement that described the Company’s business and included financial statements audited by an independent accountant; (b) file with the SEC annual financial statements audited by an independent accountant on Form 10-K and interim quarterly financial statements on Form 10-Q that disclosed its financial condition and the results of its business operations; (c) report non-recurring material events affecting the Company’s business and financial condition; (d) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the Company’s transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles (“GAAP”) and other applicable criteria; and (e) make and keep books, records, and accounts that accurately and fairly reflected the Company’s business transactions.

10. At all times relevant to this Information, the rules and regulations of the SEC required that a company whose stock was publicly traded prepare and disclose annual financial statements that had been audited by an independent public accountant. At all times relevant to this Information, Suprema employed the services of an independent accountant, namely BDO Seidman, to, among other things, perform an audit of the required annual financial statements.

An audit by an independent public accountant included examining, on a test basis, evidence supporting the amounts and disclosures in a company's financial statements. One of the tests that an accountant performed to substantiate a company's accounts receivable was to request that the company's customers verify that the customers truly owed the amount reflected as an account receivable in the company's books and records. This procedure is known as "audit confirmation."

Suprema's Bank Loans

11. At all times relevant to this Information, Suprema was a party to a series of revolving loan agreements with a bank, and later a consortium of banks (referred to subsequently as "the bank(s)") as a means of financing its business (the "revolving loan agreements"). Most of the banks that were parties to the revolving loan agreements were insured by the Federal Deposit Insurance Corporation.

12. The revolving loan agreements provided that Suprema could borrow against a certain percentage of its eligible accounts receivable (that is, amounts it was owed by customers for sales to those customers) and a percentage of the book value of certain of its inventory. The percentage of accounts receivable that Suprema could borrow against varied under the revolving loan agreements, and ranged from 80% to 85%. The percentage of inventory against which Suprema could borrow also varied under the revolving loan agreements, and ranged from 35% to 60%.

13. The revolving loan agreements further provided, among other things, that Suprema could not borrow against any invoice that was outstanding for more than ninety days and could

not borrow on an invoice unless the product reflected on that invoice had, in fact, been shipped and delivered to the customer.

14. The revolving loan agreements also required Suprema to furnish the bank(s) on a monthly basis with an accounts receivable aging report and an accounts payable aging report, which listed the outstanding receivables and payables respectively by date and customer, and an inventory report, which included a complete aggregate dollar value of all inventory held by Suprema for the previous month. The revolving loan agreements further required Suprema to provide a Borrowing Base Certificate to the bank(s) each month listing the eligible receivables and inventory. Under the revolving loan agreements, the Borrowing Base Certificate had to include a certification by an officer of Suprema that the information provided to the bank(s) regarding its receivables and inventory was true and correct in all material respects.

15. To obtain cash under the revolving loan agreements, Suprema was required to deliver a Borrowing Notice to the bank(s), which set forth the amount of the loan requested and the requested borrowing date. Under the revolving loan agreements, each Borrowing Notice constituted a warranty and representation by Suprema that the accounts receivable against which it was borrowing under the Borrowing Notice were genuine, represented bona fide transactions completed in the ordinary course of business and were in all respects what they purported to be.

16. The revolving loan agreements further required that Suprema submit to the bank(s) all quarterly reports on Form 10-Q and all annual reports on Form 10-K substantially contemporaneously with their filing with the SEC and that the financial statements, as incorporated in those SEC filings, be prepared in accordance with GAAP.

17. Due to Suprema's seeming financial success, the bank(s) increased Suprema's credit line dramatically over the years. For example, under the initial revolving loan agreement with the bank(s) in 1994, Suprema could borrow up to a maximum of \$6 million. By January 1997, the credit line had more than tripled to \$20 million. The credit line was further increased to \$35 million in December 1998, \$55 million in September 1999, \$85 million in March 2000 and \$130 million in September 2001. By October 2001, Suprema could borrow up to \$140 million.

The Conspiracy

18. From as early as 1997 through in or about February 2002, in the District of New Jersey and elsewhere, defendant

GEORGE VIEIRA

and others known and unknown, did knowingly and willfully combine, conspire, confederate and agree with others to commit offenses against the United States, that is:

a. to use and employ, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 ("Rule 10b-5"), in connection with the purchase and sale of Suprema securities, by (i) employing devices, schemes, and artifices to defraud; (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaging in acts, practices, and courses of

business which operated and would operate as a fraud and deceit upon investors, contrary to Title 15, United States Code, Sections 78j(b) and 78ff, and Rule 10b-5;

b. to devise a scheme and artifice to defraud, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing such scheme and artifice, to place and cause to be placed in authorized depositories for mail matter, and to take and receive therefrom, matters and things to be sent and delivered by the Postal Service and by commercial interstate carriers, and to knowingly cause to be delivered by mail and such carriers according to the directions thereon and at the places at which they were directed to be delivered by the persons to whom they were addressed, such matters and things, contrary to Title 18, United States Code, Section 1341;

c. to execute a scheme and artifice to defraud a financial institution, and to obtain money and property owned by and under the custody and control of a financial institution by means of false and fraudulent pretenses, representations, and promises, contrary to Title 18, United States Code, Section 1344; and

d. to, directly and indirectly, (a) make and cause to be made materially false and misleading statements; and (b) omit to state, and cause others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading to accountants in connection with (i) audits and examinations of the financial

statements of Suprema, which was an issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934, and which were required by law to be made; and (ii) the preparation and filing of documents and reports required to be filed with the SEC, contrary to Title 17, Code of Federal Regulations, Section 240.13b2-2 and Title 15, United States Code, Section 78ff.

The Objects of the Conspiracy

19. It was a principal object of the conspiracy to falsely inflate Suprema's sales by creating false invoices and other documents designed to make it appear as if Suprema had sold and shipped product at various times to both of defendant VIEIRA's companies, WCC and CMM, when it had not.

20. It was a further object of the conspiracy to record those bogus sales in Suprema's books and records and to present the fraudulently inflated sales and accounts receivables in documents submitted to the bank(s), to the SEC and to the investing public in order to obtain more money from the bank(s) pursuant to the revolving loan agreement and to make Suprema appear more successful and profitable to the bank(s) and the investing public than it actually was.

21. It was a further object of the conspiracy to disguise and conceal the fraud by orchestrating sham circular transactions between Suprema and VIEIRA's companies, WCC and CMM, to make it appear as if Suprema's fraudulent invoices to them had been paid.

22. It was a further object of the conspiracy to cause VIEIRA, or others at the direction of VIEIRA, to sign false audit confirmations on behalf of WCC and/or CMM to conceal the fact

that Suprema had recorded false and fictitious sales to those companies on its books and records, as well as in documents submitted to the bank(s), the SEC and the investing public.

Means and Methods of the Conspiracy

23. Among the means and methods employed by defendant GEORGE VIEIRA and his co-conspirators to carry out the conspiracy were those set forth in paragraphs 24 through 39 below.

Creation of Fictitious Sales

24. From as early as 1997 through approximately January 2002, officers and/or employees at Suprema created fraudulent documents, including purchase orders, invoices and bills of lading, purportedly evidencing sales by Suprema to WCC and CMM, which sales either never took place, or took place for substantially less than the amounts reflected on the documents. Employees of Suprema, at the direction of and with the participation of Suprema management, often created false purchase orders to make it appear as if CMM or WCC had ordered product from Suprema. Employees at Suprema subsequently created, and signed, bills of lading, and other documents, to make it appear as if the product purportedly ordered by VIEIRA's companies had been shipped. The creation of a false bill of lading resulted in the creation of a false invoice, which was sent – usually by U.S. mail – to WCC or CMM purportedly seeking payment on the fraudulent sales. The creation of a fraudulent invoice caused a false sale and corresponding false account receivable to be entered on the books and records of Suprema, which consequently led to an overstatement of revenue and assets in Suprema's financial statements.

25. The coconspirators submitted documents reflecting the inflated sales and accounts receivable to the bank(s) in order to obtain money from the bank(s) pursuant to the revolving loan agreements.

Fraudulent Circular Transactions

26. To conceal their fraud, the coconspirators devised a sophisticated scheme to make it appear that payment on the fraudulent invoices had been received. Because the sales were fictitious or severely inflated, defendant VIEIRA and his companies were not going to – or could not afford to – pay the invoices sent by Suprema using their own money. Accordingly, the coconspirators at Suprema devised a way to provide VIEIRA with money which he could use to appear to pay Suprema's fraudulent invoices. They did that generally by having CMM or WCC generate and send fraudulent invoices to Suprema, purportedly evidencing sales and shipments of product from CMM or WCC to Suprema; in fact, these sales and shipments never took place. Suprema sent CMM or WCC checks, often by Federal Express, in purported payment of those fraudulent invoices. Drawing on the monies from the checks Suprema had sent to CMM or WCC, defendant VIEIRA then sent checks, or caused checks to be sent, to Suprema, also often by Federal Express, to pay Suprema's fraudulent invoices to WCC or CMM.

27. These fraudulent circular paper transactions resulted in a flow of funds from Suprema to CMM or WCC and back to Suprema. Typically, checks were sent from Suprema to CMM or WCC in amounts greater than the corresponding checks sent from CMM or WCC to Suprema. The difference in the checks usually represented the commission of WCC and CMM for participating in the fraudulent scheme. Funds for the checks sent by Suprema to VIEIRA's

companies were usually drawn on Suprema's line of credit, which increased as Suprema's accounts receivable grew.

28. Between approximately 1998 and approximately January 2002, Suprema recorded more than \$34 million in sales to WCC and more than more than \$6 million in sales to CMM. Virtually all of the sales on Suprema's books and records to WCC, and at least \$1 million of the sales to CMM, were fabricated or inflated by defendant VIEIRA and his coconspirators.

False Representations to the Bank(s)

29. At various times relevant to this Information, the coconspirators at Suprema submitted fraudulent Borrowing Base Certificates, and fraudulent accounts receivable aging reports, which included the fabricated or inflated sales to WCC and/or CMM, to the bank(s) to obtain more money from the bank(s) under the revolving loan agreements than Suprema was entitled to borrow. The Borrowing Base Certificates, which were certified as true and accurate by Suprema's CFO, as well as the aging reports, were false in that they included the fictitious or inflated sales to WCC and/or CMM.

30. At various times relevant to this Information, the coconspirators at Suprema regularly sent, or caused to be sent, Borrowing Notices to the bank(s) seeking funds pursuant to the revolving loan agreement(s), knowing that, among other things, the accounts receivable against which Suprema was seeking to borrow had been fraudulently inflated.

31. At various times relevant to this Information, the coconspirators at Suprema further falsely represented to the bank(s) that Suprema's financial statements were true and accurate in all material respects and that they had been prepared in accordance with GAAP, knowing that Suprema's financial statements included bogus sales and inflated assets.

False Statements in Suprema's Annual and Quarterly Filings

32. At various times relevant to this Information, Suprema, pursuant to its obligations under the federal securities laws and regulations, filed with the SEC quarterly reports on Form 10-Q and annual reports on Form 10-K, in which it detailed, among other things, the purported results of its business operations, its financial condition and performance and its business practices. Each of these filings incorporated Suprema's financial statements and contained material misstatements regarding Suprema's financial condition, its business practices and its past financial performance, among other things (these SEC filings are hereinafter referred to collectively as "the Financial Statements"). Suprema and its executive officers also disseminated false financial information to members of the investing public in Company press releases and in statements made to securities industry analysts. As set forth above and below, Suprema's statements to the SEC, to its bank(s), to Suprema's auditors, and to members of the investing public were riddled with misrepresentations as part of a concerted and purposeful effort by management of Suprema and others to mislead the bank(s) and the investing public into believing the Company was a vibrant and rapidly growing concern.

33. Through the fraudulent conduct described above, the coconspirators caused Suprema to report approximately \$34 million in fraudulently inflated sales to WCC and CMM between as early as 1997 and September 2001. The Financial Statements included false information concerning Suprema's accounts receivable, net sales and total assets, among other things. These false statements in the Financial Statements presented a materially false and

misleading picture of Suprema's true financial and business condition, thereby operating as a fraud and deceit upon investors in Suprema's common stock.

34. The Financial Statements also falsely stated, among other things, that they presented fairly Suprema's financial position and results of operations, that they had been prepared pursuant to the rules and regulations of the SEC and in accordance with GAAP, and that sales of cheese products were not recognized until the products were shipped.

False Statements in Suprema's Registration Statements

35. In or about August 2000, and September, October and November 2001, officers of Suprema caused Suprema to file with the SEC registration statements, and amendments thereto, in connection with two secondary offerings of common stock for sale to the public (the "Registration Statements"). The Registration Statements described the Company's business and included financial statements for several years prior to the respective offering of stock.

36. In or about August 2000 and November 2001, the SEC declared Suprema's Registration Statements effective, which allowed the respective secondary offerings to occur. In the August 2000 secondary offering, Suprema sold 1,100,000 shares of its common stock to members of the public at a cost of \$8.00 a share, resulting in total proceeds to Suprema, after the deduction of underwriting fees and commissions, of \$8,096,000. In the November 2001 secondary offering, Suprema sold 3,500,000 shares of common stock at \$12.75 a share, yielding total proceeds to Suprema, after the deduction of underwriting fees and commissions, of \$41,510,000.

37. The Registration Statements filed with the SEC in 2000 and 2001 falsely reported Suprema's accounts receivable, total net sales and total assets, among other things. As the

coconspirators well knew, the accounts receivable, sales and total assets contained in the Registration Statements were substantially overstated because of the fraudulent practices described above.

The Impact on the Price of Suprema's Common Stock

38. As a result of the false and misleading statements made by Suprema concerning its business and financial condition, its past financial performance, and its business practices, the price of Suprema's common stock was inflated artificially. In or about August 2000, when Suprema conducted a secondary offering of Suprema common stock, the stock was offered at approximately \$8.00 per share. By November 2001, when Suprema had another offering of stock, Suprema's common stock was offered at \$12.75 per share. By December 2001, just prior to NASDAQ's suspension of trading of Suprema stock, Suprema's common stock was trading as high as approximately \$14.00 per share.

The False Audit Confirmations

39. In the course of that annual audit of Suprema's financial statements, officers and employees of Suprema directed VIEIRA, on behalf of WCC, to submit, or cause the submission of, false audit confirmations to BDO, Suprema's auditors. The audit confirmations sought verification by WCC that legitimate sales had occurred and that the amounts reflected on Suprema's financial statements as receivables were in fact due and owing by WCC. As defendant VIEIRA and his coconspirators well knew, the sales and receivables figures set forth on the audit confirmations for WCC were false. Defendant VIEIRA signed, or caused the signing of, false audit confirmations to conceal the fact that Suprema had recorded false and

fictitious sales and accounts receivables from WCC on its books and records and consequently in its financial statements.

Overt Acts

40. In furtherance of the conspiracy and to effect its unlawful objects, defendant GEORGE VIEIRA and others not named as defendants herein committed the following overt acts, among others, in the District of Jersey and elsewhere:

a. On or about May 14, 1999, defendant GEORGE VIEIRA caused the creation and issuance of a fraudulent invoice, number 1085, to Suprema Specialties West for a non-existent sale of \$134, 875 in milk protein concentrate.

b. On or about May 17, 1999, coconspirators at Suprema issued, or caused the issuance, of a check to CMM for \$134,875 in payment of CMM's fraudulent invoice, number 1085.

c. On or about May 14, 1999, defendant GEORGE VIEIRA caused the creation and issuance of a fraudulent invoice, number 1087, to Suprema Specialties West for two non-existent sales of \$271,375 in milk protein concentrate.

d. On or about May 20, 1999, coconspirators at Suprema issued, or caused the issuance, of a check to CMM for \$271,375 in payment of CMM's fraudulent invoice number 1087.

e. On or about October 1, 1999, defendant GEORGE VIEIRA caused the creation and issuance of a fraudulent WCC invoice, number 1230, to Suprema for a non-existent sale of \$161,000 in milk protein isolates.

f. On or about October 1, 1999, defendant GEORGE VIEIRA caused the creation and issuance of a fraudulent WCC invoice, number 1231, to Suprema for a non-existent sale of \$49,950 in milk protein concentrate.

g. On or about October 8, 1999, coconspirators at Suprema issued, or caused the issuance of, a check to WCC in payment of WCC invoices numbers 1230 and 1231, for \$210, 950.

h. On or about February 24, 2000, defendant GEORGE VIEIRA issued, or caused the issuance, of two fraudulent CMM invoices to Suprema, numbers 1641 and 1643, for non-existent sales of \$190,612.50 in milk protein isolates and \$62,387.50 in skim milk powder.

i. On or about March 6, 2000, coconspirators at Suprema issued, or caused the issuance of, a check to CMM for \$253,000 in payment of CMM's fraudulent invoices, numbers 1641 and 1643.

j. In or about August 2001, defendant GEORGE VIEIRA met with Suprema's Chief Executive Officer ("CEO") at the wake of Suprema's former Executive Vice President.

k. In or about late December 2001 or early January 2002, defendant GEORGE VIEIRA telephoned the former Controller of Suprema at his home to try to convince him to return to work at Suprema.

l. In or about February 2002, defendant GEORGE VIEIRA met with Suprema's CEO at an airport located in Miami, Florida.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO

(Securities Fraud)

41. The allegations contained in paragraphs 1 through 17 and 24 through 39 of Count One of this Information are hereby realleged as if set forth at length herein.

42. Between as early as approximately 1997 and in or about January 2002, in the District of New Jersey and elsewhere, defendant

GEORGE VIEIRA

did knowingly and willfully, directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, use and employ devices, schemes and artifices to defraud, make untrue statements of material fact and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon persons in connection with the purchase and sale of Suprema securities.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

CHRISTOPHER J. CHRISTIE
United States Attorney